

Town of Acton
Board of Appeals
October 27, 2008 Public Hearing

Re: Hearing # 08-06
40 Newton Road
Map E31 Parcel 105

Petition For Review Of Building Permit Number 021763 To
"Add 28 x 68 Manufactured HUD Home To Existing Structure"

Respectfully submitted by
Andrew Shlesinger and
Mary Di Nino, Petitioners
through their Attorney:

COPY

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I. INTRODUCTION

On May 28, 2008, Michael Connolly and Maureen Connolly filed a “Building Permit Application To Construct, Repair, Renovate Or Demolish a *One- or Two-Family Dwelling* (copy attached as Exhibit V. A). That Application concerns 40 Newton Road, a purported 41,482 square foot lot in an R2 Zone. The Application was for an “Addition” only (not for “Alteration(s)” “Demolition”, or “Accessory Building”). The Application describes the proposed work as follows:

add 28 x 68 manufactured HUD Home to existing structure.

On June 19, 2008, the Building Commissioner signed the Building Permit Application.

Subsequently, several abutters (13 signatures) to 40 Newton Road submitted a written request to the Zoning Enforcement Officer (and Town Planner) to enforce the provision of Sections 3.3, 3.3.2, 3.3.21, and 3.3.2.2 of the Zoning Bylaw (copy attached as Exhibit V. B). Thereafter, the petitioners filed this petition for Review as a result of the Zoning Enforcement Officer’s failure to enforce the above-referenced sections of the Zoning Bylaw.

II. PROVISIONS NOT ENFORCED

A. Bylaw 3.7

Section 3.7 of the Zoning Bylaw expressly prohibits mobile homes in all zoning districts. Since Acton's Zoning Bylaw does not define a mobile home, the definition set forth in the Massachusetts Building Code governs.¹ The Applicants' "Addition" is a "mobile home." It is:

A structure transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling with permanent foundation, when connected to the required facilities, and includes plumbing, heating, air-conditioning and electrical systems contained therein. 780 CMR 202.0

As with all mobile homes that mobile home is expressly prohibited by Section 3.7 of the Acton Zoning Bylaw.

B. Bylaw 3.3.2

Under this section of the Zoning Bylaw, the Applicants' proposed single family dwelling with one apartment would be permitted provided:

1. the building "was in existence on or before January 1, 1990."
2. the pre-existing building is "altered and used for not more than two DWELLING UNITS, the Principal Unit plus one Apartment."
3. the "apartment" does not exceed 800 square feet (3.3.2.1)

¹ For the purposes of these provisions, a mobile home shall be considered a manufactured home. 780 CMR 120.K201.

In fact, the definition of a mobile home that is set forth in 780 CMR 202.0 is substantially the same as the definitions of a manufactured home set forth in 780 CMR 120.K201 and MGLA c. 140 § 32Q.

4. the “apartment” contains no more than two bedrooms (3.3.2.2)

In fact, the purported “apartment” violates four separate requirements of Section 3.3.2. First, the “DOUBLE WIDE HOME” “addition” was not in “existence on or before January 1, 1990.” Second the “Applicants’ pre-existing “BUILDING” has not been “altered” (i.e. “The reconfiguration of existing spaces, including relocation of existing walls and/or creation of rooms or spaces within the physical confines of the existing building.” 780 CMR 9302) to create the so-called “apartment”. Third, according to the building plan, the “apartment” is 1859 square feet, more than double the 800 square feet maximum. Fourth, as planned, constructed, and installed, the “apartment” contains three bedrooms as shown on the manufacturer’s plans (see attached Exhibit V. C).

Furthermore, the Applicants’ Building Permit Application was for an “Addition”, not for an alteration. As such, on its face, the Application reveals the intention to create a new building. That new building is the 1859 sq. ft. Double Wide Manufactured Home, a second independent dwelling. Two independent dwelling units are not permitted in the R2 District. (Bylaw 3.3).

In an attempt to make the 1859 sq. ft. Double Wide Manufactured Home qualify as an apartment, the Applicants doctored the Manufacturer’s plan by whitening out closets, two bedrooms, and other standard features; and inserting walls and doors. The second home was delivered as designed by the Manufacturer (see Exhibit V.C), not in accordance with the doctored plan submitted by the Applicants.

The following facts solidify the reality that the second home is not an “apartment”:

1. it is supported on a new foundation that is separate from the pre-existing foundation.

2. the two separate foundations, and dwelling units are 28 feet apart.
3. the pre-existing building was not altered to create the “apartment” (i.e. existing spaces and walls were not reconfigured or relocated, and the new rooms were not created within the physical confines of the existing building).
4. no foundation, structural, mechanical, or electrical plans in sufficient detail to determine code compliance were submitted for the 28 foot “breezeway” that connects the two independent dwelling units.
5. the Applicants’ doctored plan proposes an “apartment” consisting of only a Master Bedroom and a Bathroom. It does not include eating or cooking areas. The proposed doctored “apartment” is not a “complete independent living” facility that includes “permanent provisions for living, sleeping, eating, cooking and sanitation” as required by 780 CMR 9302.

Finally, the septic system was not upgraded to accommodate a three bedroom home with five sinks, laundry facilities, two toilets, two bathtubs, a dishwasher, and a shower. 310 CMR 15.204 requires a system upgrade to handle the increase to the actual design flow prior to any construction. Nevertheless, the septic system has not been “upgraded first”.

III. APPLICABLE LAWS

A. Action Zoning Bylaw

1.2 Purpose - The purpose of this Bylaw is to implement the zoning powers granted to the Town of Acton under the Constitution and Statutes of the Commonwealth and includes, but is not limited to the following objectives: to lessen congestion in the STREETS; ... to prevent overcrowding of land; to avoid undue concentration of population; ... to conserve the value of land and BUILDINGS...; and to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.

1.3 Definitions - ...

1.3.3 BUILDING: A STRUCTURE enclosed within exterior walls, built or erected with any combination of materials, whether portable or fixed, having a roof, to form a STRUCTURE for the shelter of persons, animals, or property.

1.3.5 DWELLING UNIT: A portion of a BUILDING designed as the residence of one FAMILY.

1.3.17 STRUCTURE: A combination of materials assembled to give support or shelter, such as BUILDINGS, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, tennis courts, signs, fences; but not including driveways, walkways, and other paved areas, underground storage tanks, septic tanks and septic systems, and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

3.3 Residential Uses - Not more than one Building for dwelling purposes shall be located upon a LOT, except...

(c) Where a special permit has been granted for the following: ... a single FAMILY dwelling with one Apartment in a detached BUILDING under section 3.3.2.10 of this Bylaw.

3.3.2 Single FAMILY Dwelling with One Apartment- A single FAMILY Dwelling, the BUILDING of which was in existence on or before January 1, 1990, to be altered and used for not more than two DWELLING UNITS, the Principal Unit plus one Apartment, provided that:

3.3.2.1 The GROSS FLOOR AREA of the Apartment shall not exceed the lesser of fifty percent of the GROSS FLOOR AREA of the Principal Unit or 800 square feet.

3.3.2.2 There shall be no more than two bedrooms in the Apartment.

3.7 **Prohibited USES** - ...In addition, the following USES are expressly prohibited in all zoning districts.

Mobile home; mobile home park; mobile home sales

11.1 **Enforcement** – The Building Commissioner of the Town of Acton is hereby designated as the officer charged with the enforcement of this Bylaw.

11.1.1 **Enforcement Action** – The Building Commissioner, upon a written complaint of any citizen of Acton, or owner of property within Acton or upon such Commissioner’s own initiative, shall institute any appropriate action or proceedings in the name of the Town of Acton to prevent, correct, restrain or abate violation of this Bylaw. In the case where the Building Commissioner is requested in writing to enforce this Bylaw against any person allegedly in violation of same and the Building Commissioner declines to act, the Commissioner shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.

11.2 **Other Laws or Regulations** – This Bylaw shall not be construed to authorize the USE of any land or STRUCTURE for any purpose that is prohibited by any other provision of the General Laws or by any other Bylaw, rule or regulation of the Town; nor shall compliance with any such provision authorize the USE of any land or STRUCTURE in any manner inconsistent with this Bylaw, except as requires by the General Laws.

B. Code of Massachusetts Regulations

780 CMR 202.0

Mobile home: A structure transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling with permanent foundation, when connected to the required facilities, and includes plumbing, heating, air-conditioning and electrical systems contained therein.

310 CMR 15.204

No person shall increase the actual design flow to any cesspool or to any other system above the existing approved capacity, or change the type of establishment of a facility served by a cesspool, unless the cesspool or system is upgraded first. Upgrades to accept increased design flow shall be performed in full compliance with the requirements applicable to new constructions unless a variance is allowed pursuant to 310 CMR 15.414. For purposes of 310 CMR 15.204, the approved design flow shall be the flow listed in the most recent Disposal Works Construction Permit.

780 CMR 9302

ADDITION. The creation of new building area(s) connected to the existing building. This definition shall also include the addition of a deck or platform, balcony or similar structure.

ALTERATION. The reconfiguration of existing spaces, including relocation of existing walls and/or the creation of rooms or spaces within the physical confines of the existing building. Alteration may include elements of demolition.

[B] DWELLING UNIT. A single providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

IV. CONCLUSION

This is an example of trying to make a round peg fit into a square hole. The 28 x 68 Manufactured Home is an independent dwelling unit. It is not an alteration to the building that was in existence on or before January 1, 1990. It is too big (1859 sq. ft, not 800 sq. ft. or less), and has too many bedrooms (3, not 2).

Both mobile homes and two family dwellings are expressly prohibited by the Acton Zoning Bylaws. In order to meet the purposes of those Bylaws (i.e. to “lessen congestion”, “prevent overcrowding”, “avoid undue concentration of population”, etc.), this Board should enforce all of the Bylaws, overturn the decision of the zoning enforcement officer to grant the Building Permit, and revoke the Applicants’ permit.

Failure to uphold the Bylaws and to allow the 1859 sq. ft. second dwelling unit to remain on the lot will set an extremely undesirable precedent.